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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,299	02/20/2002	Ying Liu		3371

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Ying Liu, Ph.D.
1020 PineNeedle Dr.
Savannah, GA 31410

EXAMINER	
ROSARIO, DENNIS	

ART UNIT	PAPER NUMBER
2624	

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06/24/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/078,299

Applicant(s)

LIU, YING

Examiner

Dennis Rosario

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-34 is/are pending in the application.
- 4a) Of the above claim(s) 30 and 32-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/28/07 has been entered. Claims 29-34 are pending.

Election/Restrictions

2. This application contains claims directed to the following patentably distinct species:

Species I drawn to an ABM Process as depicted in figures 2,9,12,13,16,17 of drawings filed 12/28/07 and defined by claims 29, 31 and 32.

Species II drawn to an APN Process as depicted in figures 2,9,13 and 19 and defined by claims 30, 33 and 34.

3. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there is no generic claim.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

If Species I is selected then see Restriction Requirement I, below.

If Species II is selected then see Restriction Requirement II, below.

4. Restriction Requirement I:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 29 and 31, drawn to training, classified in class 382, subclass 159.
- II. Claims 29 and 32, drawn to classifying, classified in class 382, subclass 165.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as training. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

5. Restriction Requirement II:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 30 and 33, drawn to training, classified in class 382, subclass 159.
- II. Claims 30 and 34, drawn to classifying, classified in class 382, subclass 165.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as training. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

6. During a telephone conversation with Ying Liu on 6/18/08 a provisional election was made with traverse to prosecute the invention of Group I, claims 29 and 31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 30 and 32-34 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

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A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Section IV.C, reads as follows:

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. Diehr, 450 U.S. at 187, 209 USPQ at 8 ("application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection."); Benson, 409 U.S. at 71, 175 USPQ at 676 (rejecting formula claim because it "has no substantial practical application").

To satisfy section 101 requirements, the claim must be for a practical application of the Sec. 101 judicial exception, which can be identified in various ways:

The claimed invention "transforms" an article or physical object to a different state or thing.

The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

8. Claims 29 and 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 29 and 31 recites the mere manipulation of data or an abstract idea, or merely solves a mathematical problem without a limitation to a practical application. A practical application exists if the result of the claimed invention is “useful, concrete and tangible” (with the emphasis on “result”)(Guidelines, section IV.C.2.b). A “useful” result is one that satisfies the utility requirement of section 101, a “concrete” result is one that is “repeatable” or “predictable”, and a “tangible” result is one that is “real”, or “real-world”, as opposed to “abstract” (Guidelines, section IV.C.2.b)). Claims 29 and 31 merely manipulates data without ever producing a useful, concrete and tangible result. Claim 29 claims a process comprising a process. There is no beginning step or last step with a product or useful result from the process. Note that claim 29 includes recognition of images which is a useful result; however, recognition is considered part of the preamble and not part of the body of a claim that should include the useful result. Claim 31 claims a method comprising training. However, there is no useful result from the training. Note that claim 31 includes recognition of image which is useful; however, recognition of images is considered part of the preamble and is not part of the body of the claim that only includes the step of training.

In order to for the claimed product to produce a "useful, concrete and tangible" result, recitation of one or more of the following elements is suggested:

- The manipulation of data that represents a physical object or activity transformed from outside the computer.
- A physical transformations outside the computer, for example in the form of pre or post computer processing activity.
- A direct recitation of a practical application;

Applicant is also advised to provide a written explanation of how and why the claimed invention (either as currently recited or as amended) produces a useful, concrete and tangible result.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 29 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites the limitation "the ABM Process" in lines 1,2. There is insufficient antecedent basis for this limitation in the claim and ought to be amended to "an ABM Process."

Claim 29 has the abbreviation of ABM. What is ABM stand for? ABM raises the question of whether ABM ought to be treated as a name or include established terms of art or include established terms of art with a name?

According to the specification ABM stands for "Attrasoft Boltzmann machine." "Attrasoft" appears as a name and "Boltzmann" while a name is an established term of art of neural networks and classifiers and "machine" appears as a general term. Please clarify. Since the specification does not provide an explicit definition of ABM.

Claim 31 recites the limitation "the ABM learning algorithm" in lines 1,2. There is insufficient antecedent basis for this limitation in the claim and ought to be amended to "an ABM learning algorithm."

Claim 31 has the abbreviation of ABM. What is ABM stand for? ABM raises the question of whether ABM ought to be treated as a name or include established terms of art or include established terms of art with a name?

According to the specification ABM stands for "Attrasoft Boltzmann machine." "Attrasoft" appears as a name and "Boltzmann" while a name is an established term of art of neural networks and classifiers and "machine" appears as a general term. Please clarify since the specification does not provide an explicit definition of ABM.

For examination purposes the examiner will assume that ABM stands for "Attrasoft Boltzmann machine" and "Attrasoft" will be treated as a name and "Boltzmann" will be treated as a term of art and "machine" will be treat as a general or generic word.

11. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: Any process steps or step that describes the ABM Process.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Aldana (Data Mining Industry: Emerging Trends and New Opportunities).

Regarding claim 29, Aldana discloses a process of learning and recognition of images comprising of (the preceding portion is considered the preamble and not part of the body of the claim that is compared with the prior art):

a) the ABM Process ("Attrasoft Boltzmann Machine (ABM)" on page 82).

14. Claim 29 is rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. Evidence of such a sale is disclosed in Aldana (Data Mining Industry: Emerging Trends and New Opportunities) teaches that the ABM or "Attrasoft Boltzmann Machine" on page 82 is on sale: \$99.

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15. An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: All instruction manuals of Attrasoft Boltzmann Machine published before 6/6/2000 needs to be reviewed by the examiner in order to determine whether 102(b) is applicable.

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldana (Data Mining Industry: Emerging Trends and New Opportunities) in view of Omidvar (Optimization of Neural Network Topology and Information Content Using Boltzmann Methods).

Regarding claim 31, Aldana teaches a method of learning and recognition of images comprising of:

training (as discussed on page 75-77 and 81) a connected neural net (as discussed on page 81) with the ABM learning algorithm (given that the ABM learning algorithm is discussed in the context of training and a neural net, the ABM learning algorithm can perform training and have connections to a neural net).

Aldana does not teach a fully connected neural net, but teaches that the neural net has neuron connections as discussed on page 81, but does not specifically state how to connect the neurons.

Omidvar teaches a "fully connected network" in the abstract in terms of Boltzmann methods and Boltzmann machine.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify Aldana's teaching of connecting a neural network of the ABM learning algorithm with Omidvar's fully connected network and teaching of Boltzmann, because Omidvar's teaching can find the optimum accuracy as indicated in figures 2-4 of the neural network or the ABM learning algorithm.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

<http://attrasoft.com/oldsite/abm/> is pertinent as disclosing a method of the claimed ABM.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Rosario whose telephone number is (571) 272-7397. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on (571) 272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Rosario/
Examiner, Art Unit 2624

/Matthew C Bella/
Supervisory Patent Examiner, Art
Unit 2624

